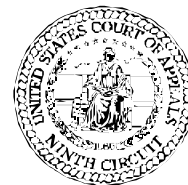




Office of the Clerk
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
95 Seventh Street
Post Office Box 193939
San Francisco, California 94119-3939



Cathy A. Catterson
Clerk of Court

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*This summary constitutes no part of the opinion of the court.
It has been prepared by court staff for the convenience of the reader.*

Southwest Voter Registration Education Project v. Shelley, 03-56498

En Banc Opinion Filed: 9/23/03

En Banc Panel: Chief Judge Mary M. Schroeder Judge Alex Kozinski
Judge Diarmuid F. O'Scannlain Judge Andrew J. Kleinfeld
Judge A. Wallace Tashima Judge Barry G. Silverman
Judge Susan P. Graber Judge M. Margaret McKeown
Judge Ronald M. Gould Judge Richard C. Tallman
Judge Johnnie B. Rawlinson (per curiam)

This matter was reheard by the United States Court of Appeals for the Ninth Circuit, sitting en banc, upon the vote of a majority of the non-recused active judges.

The en banc panel affirmed the district court's denial of a preliminary injunction in plaintiffs' action alleging that the use of obsolete punch-card voting systems in the October 7, 2003, California special election in some counties (Los Angeles, Mendocino, Sacramento, San Diego, Santa Clara and Solano counties) rather than others violates the Equal Protection Clause of the United States Constitution and Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. At the special election, California voters will be asked to vote on the recall of the California governor and two state propositions: Proposition 53, a proposed amendment to the California Constitution that would dedicate part of the state budget each year to state and local infrastructures, such as water, highway, and park projects; and Proposition 54, another proposed amendment to the California Constitution that would prevent the state from collecting or retaining racial and ethnic data about health care, hate crimes, racial profiling, public education, and public safety. The en banc panel held that the district court did not abuse its discretion in denying the preliminary injunction.

The en banc panel concluded that the plaintiffs had not established a clear probability of success on the merits of their equal protection claim that voters in counties that use punch-card machines will have a comparatively lesser chance of having their votes counted than voters in counties that use other technologies.

The en banc panel concluded that the plaintiffs had shown a possibility of success on the merits, but not a strong likelihood of success on the merits, of their claim that the disparate impact of punch-card ballots on minority voters violates Section 2 of the Voting Rights Act.

The en banc panel concluded that the district court did not abuse its discretion in determining that plaintiffs will suffer no hardship that outweighs the stake of the State of California and its citizens in having this election go forward as planned and as required by the California Constitution.

Accordingly, the en banc panel affirmed the district court's judgment denying the preliminary injunction and directed the Clerk of Court to issue the mandate forthwith.

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